

David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington St., Ste. 411  
Phoenix, AZ 85007  
(602) 452-3301  
Projects2@courts.az.gov

IN THE SUPREME COURT  
STATE OF ARIZONA

PETITION TO AMEND RULES	)	
11.2, 11.3, 11.5, and 11.7 of the	)	Supreme Court No. R-17-_____
ARIZONA RULES OF CRIMINAL	)	(expedited adoption requested)
PROCEDURE	)	
_____	)	

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendments to Rule 11 of the Arizona Rules of Criminal Procedure (“ARCrP”). These proposed amendments are designed to implement new statutory provisions concerning competency determinations in criminal cases, as enacted by Laws 2017, Chapter 14, SB 1157, and Laws 2017, Chapter 59, HB 2239. Because this legislation becomes effective on August 9, 2017, Petitioner requests the Court to adopt these proposed amendments on an emergency basis, with a comment period to follow.

**I. Background and Purpose of the Proposed New Rule.** Under A.R.S. § 13-4503(D), once any court determines that reasonable grounds exist for competency proceedings, the superior court has exclusive jurisdiction over all competency hearings. In a number of limited jurisdiction courts, the county presiding judge has appointed a limited jurisdiction court judge to act as a judge pro tempore of the superior court for the purpose of hearing Rule 11 matters in misdemeanor cases. This is done to expedite case processing without the need to transfer the case to the superior court. Senate Bill 1157 originated with the Arizona Judicial Council, and will permit a presiding superior court judge of a county to issue an administrative order authorizing a justice of the peace or municipal court judge to exercise jurisdiction over a Rule 11 matter in misdemeanor cases pending in that limited jurisdiction court without the need to appoint the judge as a pro tempore superior court judge. The administrative order may also establish various parameters under which the limited jurisdiction court judge will operate, for example, the extent to which the judge may oversee competency restoration in a particular case.

HB 2249 is a lengthy bill that amends sections of Title 13 and Title 36. The bill establishes procedures for the prosecuting agency and court to track incompetent defendants through the civil commitment process. This petition addresses the bill's amendments to Title 13. While a defendant's statements during a competency proceeding are generally inadmissible in a criminal case, HB 2239 amended A.R.S.

§ 13-4508 to allow their use in determining whether the defendant is eligible for court-ordered treatment under Title 36, or is a sexually violent person (see Title 36, Chapter 37.) Several other amendments to A.R.S. §§ 13-4517 and 13-4518 allow the court to remand an incompetent defendant to an “evaluating agency” to institute a civil commitment rather than the Department of Health Services; to order an assessment of an incompetent defendant’s eligibility for private insurance or public benefits that might be applied to medically necessary treatment; to retain jurisdiction pending a civil commitment evaluation of the incompetent defendant or the appointment of a guardian for the defendant; and, upon the prosecutor’s request, to determine if an incompetent defendant is a sexually violent person.

**II. Contents of the Proposed New Rule.** Petitioner requests amendments to four parts of Rule 11.

- Rule 11.2(d) concerns the trial court’s jurisdiction over a motion to examine the defendant’s mental condition. The proposed amendment would retain the existing provision that the superior court has “exclusive jurisdiction” over competency hearings, but it would allow a county presiding judge to issue an administrative order authorizing a limited jurisdiction court judge to handle competency matters arising in a misdemeanor case.

- Rule 11.3 governs the medical experts appointed to evaluate defendants in Rule 11 matters. It currently requires these experts be familiar with “the state’s competency standards and statutes.” Section 1 of HB 2239 amended A.R.S. § 13-4501(3)(a) to add a requirement that experts also be familiar with the state’s “criminal and involuntary commitment statutes.” The proposal amends the rule accordingly.
- Rule 11.5(b) deals with court orders after a competency hearing. The proposed amendments to Rule 11.5(b) would allow a limited jurisdiction court to dismiss charges without prejudice, which is the current practice in those limited jurisdiction courts where a judge has been appointed a pro tempore superior court judge for the purpose of handling Rule 11 matters in misdemeanor cases. The proposed amendments specify that the superior court may remand an incompetent defendant to an “evaluating agency” to begin civil commitment proceedings, or it may order the appointment of a Title 14 guardian. A new provision would permit the superior court, as provided in A.R.S. § 13-4517, to retain jurisdiction over the incompetent defendant pending those further actions. This new provision would also allow the court to enter further orders as specified in A.R.S. § 13-4517.

- Lastly, the proposed amendment to Rule 11.7(b), which concerns privileged statements of the defendant, would clarify that a defendant's statements during a Rule 11 proceeding would be admissible in a Title 36 proceeding for court-ordered treatment or to determine if the defendant is a sexually violent person, in accordance with the amendments to A.R.S. § 13-4508 made by SB 2239.

**III. Preliminary Comments.** This proposed amendments have not been widely circulated to the court communities for pre-filing comments because of the short period of time since enactment of the legislation. They have been reviewed by two superior court and three limited jurisdiction court judges who are handling Rule 11 proceedings in Maricopa County.

**IV. Request for Emergency Adoption.** SB 1157 and HB 2239 have effective dates of August 9, 2017. Petitioner therefore requests expedited adoption of the proposed amended rule with a formal comment period to follow, as permitted by Supreme Court Rule 28(G).

RESPECTFULLY SUBMITTED this 16th day of June, 2017

By /s/  
David K. Byers, Administrative Director  
Administrative Office of the Courts  
1501 W. Washington Street, Suite 411  
Phoenix, AZ 85007  
(602) 452- 3301  
Projects2@courts.az.gov

## **APPENDIX**

(Additions are shown by underline; deletions are shown by ~~striketrough~~)

### **Rule 11, Arizona Rules of Criminal Procedure**

#### **Rule 11.2. Motion to have defendant's mental condition examined**

- a. Motion for Rule 11 Examination.** At any time after an information or complaint is filed or indictment returned, any party may request in writing, or the court on its own motion may order, an examination to determine whether a defendant is competent to stand trial, or to investigate the defendant's mental condition at the time of the offense. The motion shall state the facts upon which the mental examination is sought. On the motion of or with the consent of the defendant, the court may order a screening examination for a guilty except insane plea pursuant to A.R.S. §§ 13-502 to be conducted by the mental health expert. In a capital case, the court shall order the defendant to undergo mental health examinations as required under A.R.S. § 13-703.02 and 13-703.03.
- b. Medical and Criminal History Records.** All available medical and criminal history records shall be provided to the court within three days of filing the motion for use by the examining mental health expert.
- c. Preliminary Examination.** The court may order that a preliminary examination be conducted pursuant to A.R.S. § 13-4503C to assist the court in determining if reasonable grounds exist to order further examination of the defendant.
- d. Jurisdiction.** ~~Should any court determine that reasonable grounds exist for further competency hearings, the matter shall immediately transfer to the superior court for appointment of mental health experts; Except if a limited jurisdiction court exercises jurisdiction over a competency hearing in a misdemeanor case as authorized by an administrative order of the presiding judge of the superior court in the county, the superior court has exclusive jurisdiction over all competency hearings.~~
- e. If Defendant is Competent.** If any court determines that competence is not an issue, the matter shall be immediately set for trial.

### **Rule 11.3. Appointment of experts**

- a. Grounds for Appointment.** If the court determines that reasonable grounds for an examination exist, it shall appoint at least two mental health experts to examine the defendant and to testify regarding the defendant's mental condition. The court on its own motion or upon motion of any party may order that one of the mental health experts be a physician specializing in psychiatry and licensed as provided in sub-section (b) of this rule.
- b. Definition of Mental Health Expert.** The term “mental health expert” shall mean:
- (1) Any physician who is licensed pursuant to Title 32, Chapter 13 and 17; or
  - (2) Any psychologist who is licensed pursuant to Title 32, Chapter 19.1.

The mental health expert must be familiar with this state's competency standards and statutes and criminal and involuntary commitment statutes; familiar with the treatment, training and restoration programs that are available in this state; and approved by the court as meeting court developed guidelines. Guidelines shall include demonstration of experience in forensics matters, required attendance at a court-approved training program of not less than 16 hours and any continuing forensic education programs required by the court, and annual review criteria.

**c. through g. [no changes]**

### **Rule 11.5. Hearing and orders**

- a. Hearing.** Within 30 days after the expert reports have been submitted to the court, the court shall hold a hearing to determine the defendant's competency. The parties may introduce other evidence regarding the defendant's mental condition, or by written stipulation, submit the matter on the experts' reports.
- b. Orders.** After the hearing:
- (1) If the court finds that the defendant is competent, proceedings shall continue without delay.
  - (2) If the court determines that the defendant is incompetent and that there is no substantial probability that the defendant will become competent within

21 months of the date found incompetent, it may, upon request of any party,

(A) Release the defendant from custody and dismiss the charges without prejudice.

~~(i) Remand defendant to Department of Health Services to begin civil commitment proceedings pursuant to Title 36, Chapter 5;~~

~~(ii) Order appointment of a guardian pursuant to Title 14, Chapter 5;~~

~~(iii) Release the defendant from custody and dismiss the charges without prejudice.~~

(B) If the matter is heard in superior court, the court may:

(i) remand the defendant to an evaluating agency to begin civil commitment proceedings pursuant to Title 36, Chapter 5;

(ii) order the appointment of a guardian pursuant to Title 14, Chapter 5.

(C) If the court enters an order under (B)(i) or (ii) of this section, it may retain jurisdiction and enter further orders as specified in A.R.S. §13-4517.

(3) If the superior court determines that the defendant is incompetent, it shall order competency restoration treatment unless there is clear and convincing evidence that defendant will not regain competency within 15 months. The court shall determine whether the defendant should be subject to involuntary treatment and may extend the treatment for six months beyond the 15 month limit if it finds defendant is making progress toward restoration of competency. All treatment orders shall specify the place where treatment will occur; whether the treatment is inpatient or outpatient pursuant to A.R.S. § 13-4512(A); transportation to the treatment site; length of treatment; and transportation after treatment. The treatment order shall specify that the court shall be notified if the defendant regains competency before the expiration of the order of commitment.

**c. through e. [no changes]**

## **Rule 11.7. Privilege**

**a. General Restriction.** No evidence of any kind obtained under these provisions shall be admissible at any proceeding to determine guilt or innocence unless the defendant presents evidence intended to rebut the presumption of sanity.



**b. Privileged Statements of Defendant.**

- (1) No statement of the defendant obtained under these provisions, or evidence resulting therefrom, concerning the events which form the basis of the charges against the defendant shall be admissible at the trial of guilt or innocence, or at any subsequent proceeding to determine guilt or innocence, without his or her consent.
- (2) No statement of the defendant or evidence resulting therefrom obtained under these provisions, concerning any other events or transactions, shall be admissible at any proceeding to determine the defendant's guilt or innocence of criminal charges based on such events or transactions.
- (3) A statement of the defendant obtained under these provisions, or evidence resulting therefrom, may be used by any party in a hearing to determine whether the defendant is eligible for court-ordered treatment pursuant to Title 36, Chapter 5, or is a sexually violent person.